

## REMARKS

This is a full and timely response to the outstanding non-final Office Action mailed November 5, 2004. Reconsideration and allowance of the application and pending claims are respectfully requested.

**Applicant notes that, although the Office Action Summary indicates that all claims have been rejected, the Detailed Action fails to provide a rejection of claims 32-34. In view of this, Applicant respectfully requests that the Examiner either identify claims 32-34 as being allowable or provide a proper basis for rejection of those claims in a further non-final Office Action so that the Applicant may have a full opportunity to respond to such a rejection.**

### **I. Claim Rejections - 35 U.S.C. § 102(e)**

#### **A. Statement of the Rejection**

Claims 1-4, 6-11, 21, and 31 have been rejected under 35 U.S.C. § 102(e) as being anticipated by Gleichauf et al. ("Gleichauf," U.S. Pat. No. 6,324,656).

The rejection states that Gleichauf discloses Applicant's invention as recited in the above-identified claims. Applicant respectfully traverses this rejection.

#### **B. The Gleichauf Reference**

Gleichauf discloses a system and method for network vulnerability assessment. As is described by Gleichauf, a network vulnerability assessment (NVA) engine 20 is provided that performs network vulnerability assessments on a given network, which may include workstations 12 that are connected to a network backbone 14. Gleichauf, column 4, lines 9-55. The assessment includes three main phases: a discovery phase, a data collection phase, and an analysis phase. Id.

In the discovery phase, the NVA engine pings devices coupled to the network backbone in order to identify all devices that are so coupled. Id. Gleichauf also refers to this as “host discovery.” Id. Next, the NVA engine performs port scans on each discovered host to collect data that pertains to network vulnerability. Id. The data collected through the port scans is placed in a port database 22. Id.

Once data has been collected in the port database, the NVA analyzes the data in view of a rule set 24. Id. From that analysis, the vulnerability of the network can be assessed. Id.

### **C. Discussion of the Rejection**

It is axiomatic that “[a]nticipation requires the disclosure in a single prior art reference of *each element* of the claim under consideration.” W. L. Gore & Associates, Inc. v. Garlock, Inc., 721 F.2d 1540, 1554, 220 U.S.P.Q. 303, 313 (Fed. Cir. 1983)(emphasis added). Therefore, every claimed feature of the claimed invention must be represented in the applied reference to constitute a proper rejection under 35 U.S.C. § 102(e). In the present case, not every feature of the claimed invention is represented in the Gleichauf reference.

From the above discussion, it is clear that Gleichauf teaches a system that identifies devices that are connected to a network and assesses the vulnerability of the network in view of the ports of those devices. As is known in the art, such port scanning is often used to gauge a network’s susceptibility to attack. As described by webopedia.com, a continually-updated online dictionary for computing and Internet terminology, the term “port scanning” is described as:

The act of systematically scanning a computer's ports. Since a port is a place where information goes into and out of a computer, port scanning identifies open doors to a computer. Port scanning has legitimate uses in managing networks, but port scanning also can be malicious in nature if someone is looking for a weakened access point to break into your computer. . . .  
www.webopedia.com, February 5, 2002 (attacheded).

In view of the above, it is equally clear that, although Gleichauf discloses port scanning, Gleichauf does not disclose identifying devices that are connected to the device (i.e., host) that is connected to the network. For instance, although the Gleichauf system collects information as to the susceptibility of the ports of a given workstation, the Gleichauf system is not described as determining what devices (e.g., external hard drive, tape drive, etc.) are connected to that workstation. Accordingly, although the Gleichauf system provides a system administrator with an idea of the vulnerability of a network given the status of the ports of devices connected to the network, the Gleichauf system does not provide that administrator with information as to every device that is connected to a device (i.e., host) that is connected to the network.

In view of the above, the Gleichauf reference does not anticipate any of Applicant's independent claims 1, 11, 21, or 31. Each of those claims is discussed in the following.

With reference first to independent claim 1, the Gleichauf reference does not teach "scanning the network host with the remote command process to *determine if devices are connected to the host*" or "receiving a response to the scan request from the remote command process that *indicates whether a device is connected to the network host*" as is required by that claim (emphasis added).

Regarding claim 4, which depends from claim 1, the Gleichauf reference does not teach "sending a scan request from the remote command process to a host application program interface". On this point the Office Action alleges that Gleichauf's network is an application program interface. As a first matter, a network cannot be considered an application program interface or "API" as it is commonly called in computer parlance. Regardless, claim 1 recites that the "remote command process" is on a host. Therefore, if the remote command process sends a scan request to a host application program interface presumably to determine what devices are connected to that host, it follows that Gleichauf's "application program interface" cannot be network 14.

Referring next to independent claim 11, Gleichauf does not teach "means for scanning the network host with the remote command process to determine if devices are connected to the host" or "means for receiving a response to the scan request from the remote command process that indicates whether a device is connected to the network host" at least for the reasons identified above in relation to claim 1.

Regarding claim 14, which depends from claim 11, the Gleichauf reference does not teach "means for sending a scan request from the remote command process to a host application program interface". Again, Gleichauf's network cannot be considered an API and, even if it could, such an arrangement would not satisfy claim 14.

With reference to independent claim 21, Gleichauf does not teach "logic configured to scan the network host with the remote command process to determine if devices are connected to the host" or "logic configured to receive a response to the scan request from the remote command process that indicates whether a device is connected to the network host" at least for the reasons identified above in relation to claim 1.

Regarding claim 24, which depends from claim 21, the Gleichauf reference does not teach “logic configured to send a scan request from the remote command process to a host application program interface”. Once more, Gleichauf’s network cannot be considered an API and, even if it could, such an arrangement would not satisfy claim 24.

Turning next to independent claim 31, Gleichauf also fails to teach “a remote command process running on a second network host, the remote command process being configured to receive the scan request sent by the controller process and initiate a scan of the second network host *to determine whether devices are connected to the second network host*” as is required by that claim (emphasis added). Again, Gleichauf is silent as to determining what devices are connected to the devices (i.e., hosts) that are connected to a network. Instead, Gleichauf is concerned with the vulnerability of the ports of devices that are connected to a network.

Due to these shortcomings of the Gleichauf reference, Applicant respectfully asserts that Gleichauf does not anticipate Applicant’s claims. Therefore, Applicant respectfully requests that the rejection of these claims be withdrawn.

## **II. Claim Rejections - 35 U.S.C. § 103(a)**

### **A. Statement of the Rejection**

Claim 5 has been rejected under 35 U.S.C. § 103(a) as being unpatentable over Gleichauf in view of Hemphill et al. (“Hemphill,” U.S. Pat. No. 6,490,617).

The rejection alleges that Gleichauf discloses Applicant’s invention substantially as claimed with the exception of receiving device addresses from an application program interface. The rejection concludes, however, that in view of the Hemphill disclosure, it would have been obvious to a person having ordinary skill in the art to

modify the Gleichauf system to so receive device addresses. Applicant respectfully traverses this rejection.

**B. Discussion of the Rejection**

As identified above in reference to claim 4, from which claim 5 depends, Gleichauf does not teach "sending a scan request from the remote command process to a host application program interface". Given that Hemphill does not remedy this deficiency of the Gleichauf reference, Applicant respectfully submits that claim 5 is allowable over the Gleichauf/Hemphill combination for at least the same reasons that claim 1 is allowable over Gleichauf.

**III. Rejection of Claims 12-20 and 22-30**

Claims 12-20 and 22-30 are presumably rejected in view of prior art. The only discussion contained in the Detailed Action about claims 12-20 and 22-30 provides as follows:

4. Claims 12-20 and 22-30 do not teach or define any additional limitations over claims 1-10 and therefore are rejected for similar reasons.

Office Action, page 7, lines 3-4.

Applicant respectfully objects to the rejection as being clearly improper. As a first matter, it is not clear whether the rejection is under 35 U.S.C. §102 or §103. In that the Office Action is silent on this point, Applicant cannot properly traverse the rejection.

As a second matter, no single reference or combination of references has been cited in the Office Action as anticipating or rendering obvious "claims 1-10." For

instance, Gleichauf is alleged to anticipate claims 1-4 and 6-10, while the Gleichauf/Hemphill combination is alleged to render claim 5 obvious. Therefore, the rejection, which states that claims 12-20 and 22-30 are rejected for "similar reasons" as "claims 1-10," is ambiguous. If claims 12-20 and 22-30 are rejected for the same reasons as 1-4 and 6-10, why were claims 12-20 and 22-30 not included in the rejection under 35 U.S.C. § 102(e)? This ambiguity further prevents Applicant from properly traversing the rejection.

In view of the above-noted deficiencies of the rejection, Applicant submits that the rejection is improper and should be withdrawn. Applicant therefore requests that claims 12-20 and 22-30 be identified as being allowable or a proper rejection against them be provided. In the latter case, such a rejection should be non-final given that that rejection would be the first proper rejection of claims 12-20 and 22-30.

#### **IV. Status of Claims 32-34**

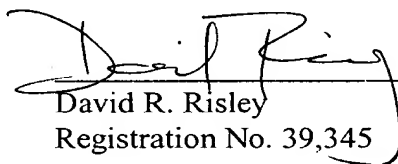
Applicant again notes that, although the Office Action Summary indicates that all claims have been rejected, the Detailed Action fails to provide a rejection of claims 32-34. In view of the above, Applicant respectfully requests that the Examiner either identify claims 32-34 as being allowable or provide a proper basis for rejection of those claims in a further non-final Office Action so that the Applicant may have a full opportunity to respond to such rejections.

Applicant further notes that claims 32-34 contain limitations that are clearly not contained within the other claims for which rejections were provided in the Detailed Action. Therefore, it is improper to summarily dismiss claims 32-34 as being rejected "for similar reasons" as those other claims.

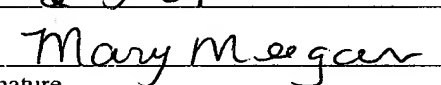
### CONCLUSION

Applicant respectfully submits that Applicant's pending claims are in condition for allowance. Favorable reconsideration and allowance of the present application and all pending claims are hereby courteously requested. If, in the opinion of the Examiner, a telephonic conference would expedite the examination of this matter, the Examiner is invited to call the undersigned attorney at (770) 933-9500.

Respectfully submitted,

  
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2-3-04  
  
Signature